

EXHIBIT I

IN THE UNITED STATES BANKRUPTCY COURT
IN AND FOR THE DISTRICT OF DELAWARE

In re : Case No.
WINSTAR COMMUNICATIONS, :
INC., et al., :
Debtors. : No. 01-1430 (JJF)

Wilmington, Delaware
Monday, December 17, 2001
3:05 p.m.

BEFORE: HONORABLE JOSEPH J. FARNAN, JR., U.S.D.C.J.

1850

1 (The following took place in chambers, Ms.
2 Morgan, Mr. Shapiro, Mr. Cobb, Mr. Karotkin, and Mr. Kenney
3 being present.)

4 THE COURT: There is a hearing today scheduled
5 for a sale motion, and that was the only item that I had put
6 on the agenda. As I understand it, there is no sale. I have
7 asked counsel to come in and speak to me about the status of
8 this Chapter 11 and whether or not there still is no sale.
9 If counsel could put their appearances for the court reporter
10 on the record.

11 MR. SHAPIRO: Mark Shapiro from Shearman &
12 Sterling for the debtors.

13 MS. MORGAN: Pauline Morgan from Young Conaway
14 for the debtors.

15 MR. COBB: Richard Cobb of Klett Rooney on behalf
16 of the debtor-in-possession lenders.

17 MR. KAROTKIN: Steven Karotkin, Weil, Gotshal &
18 Manges, for the debtor-in-position lenders.

19 MR. KENNEY: Mark Kenney for the United States
20 Trustee.

21 THE COURT: Is it still correct that we have no
22 sale to rule upon?

23 MR. SHAPIRO: Yes.

24 THE COURT: I don't know how this fellow got in
25 chambers, but his name is Howard Jonas.

1 MR. KAROTKIN: Can I respond to that, Howard
2 Jonas?

3 THE COURT: Let me just put it on the record. He
4 is from IDT Corporation, Newark, New Jersey, who presented a
5 card to my secretary saying he is a bidder.

6 Your turn.

7 MR. KAROTKIN: IDT has kind of floated in and out
8 of this over the last three or four weeks with various
9 proposals, submitting proposals, withdrawing proposals. As I
10 understand it, they submitted a proposal on Friday or
11 Saturday --

12 MR. SHAPIRO: Friday afternoon.

13 MR. KAROTKIN: -- pursuant to which they made an
14 offer to purchase some of the assets out of a Chapter 7. The
15 people from Blackstone have been trying to understand what
16 they are proposing and exactly what they mean. And right
17 before we came in here now, there were some discussions going
18 on with them to try to figure out whether a potential
19 transaction was possible. I was involved in those
20 discussions. I think that probably within ten or 15 minutes
21 there would be some more definiteness to whether or not that
22 was a potential. But I don't want to overstate anything.

23 THE COURT: All right. I am going to take the
24 view presently -- of course, it could change, because I
25 assume they are still talking out there -- that there is a

1 motion for a sale but no sale pending for me to rule on. So
2 the question is, scheduling going forward, what do I need to
3 schedule to move this case, either what was discussed at the
4 hearing that we continued to today, the possible conversion
5 to a Chapter 7, and what Court time would you need if that
6 was the application, or some other application.

7 MR. SHAPIRO: I think where we are right now is
8 the bidder, the one bidder who was left said that they had
9 the money. But of course we haven't seen it yet. And of
10 course, as recently --

11 THE COURT: I am beyond that. I am saying there
12 is no sale.

13 MR. SHAPIRO: Assuming there is no sale, I think
14 we have no choice but to convert the case. We were there
15 last week and I think that's where we are now. I think what
16 we have been talking to Mr. Kenney about is we tried to do
17 this, because it is a regulated company, in the absolutely
18 least disruptive way to everybody involved. That is my goal,
19 to do something that will not harm people. So I think it is
20 our view -- we have talked to the U.S. Trustee's Office about
21 it -- that we try to put into place a Chapter 7 trustee, have
22 a very, very shortened order for a hearing, a 341 meeting,
23 and put into place a permanent trustee very quickly so that
24 this whole 30-day migration program can be effectuated
25 quickly and in a way that is consistent with what the FCC is

1 interested in having and in a way that is consistent with
2 what the banks have been having.

3 I think he is amenable to that general concept.

4 MR. KENNEY: Right. I think what I get within
5 that concept, Your Honor, is because this is a regulated
6 company and because there are some significant governmental
7 interests involved here, we would want to make sure that the
8 order converting the case not only authorizes but directs the
9 trustee to operate the company to whatever extent is
10 necessary to avoid these disruptions. I am not sure if we
11 can avoid all of the disruptions to all customers, but
12 certainly the federal and state agencies that are involved.

13 I had an inquiry from the district executive for
14 the Southern District of New York, who said their entire
15 system is on Winstar, and Verizon right now is not a viable
16 alternative for them because Verizon is still trying to
17 restore service to people after September 11.

18 MS. BAER (Court's Secretary): There were
19 representatives from the Zimmerman Group that just knocked on
20 the door to let you know that they are here and that they
21 have an offer.

22 THE COURT: So what I am hearing is that you
23 probably need to do some strategizing and paperwork, limited
24 paperwork, and, we had an omnibus hearing scheduled in this
25 case for --

1 MS. MORGAN: The 20th.

2 MR. COBB: Thursday.

3 THE COURT: What time was it?

4 MS. MORGAN: 3:30, I think.

5 THE COURT: Would you want to use that date or
6 have me give you a date next week, where you could come back
7 with whatever you didn't get in interim relief today?

8 MR. SHAPIRO: One of the questions is whether we
9 can do it more quickly. I think everyone is very concerned
10 that if we keep going we could --

11 THE COURT: Quicker than the 20th, sure. I want
12 to be available to help you get through this.

13 MR. SHAPIRO: Our thought was to try to construct
14 an order that is consistent with what we just talked about,
15 that is consistent with ultimately making sure that the
16 system stays up for 30 days. The banks and the carriers have
17 not yet reached agreement on how that will work. The banks
18 are agreeing to allow some use of cash collateral to keep
19 this going. The carriers want to be paid in full. And you
20 have a negotiation that is currently ongoing between how much
21 they should get and how much the banks are willing to let
22 them have. That hasn't been concluded. I think if we can
23 have some out date by which everyone has got to reach an
24 agreement, put pressure on everyone to reach a deal, that
25 will be very helpful to us, if we could say we are converting

1 the case, and subject to working out an acceptable order in
2 the next 24 hours, and we will come back to Your Honor with
3 an order, hopefully that is consensual, with the U.S.
4 Trustee, the banks, and the FCC.

5 THE COURT: So let's assume that I say 24 hours,
6 would you want me to schedule a hearing, if it is not
7 consensual, for tomorrow afternoon?

8 MR. SHAPIRO: Yes, I think that would make sense,
9 if you had the time.

10 MR. KAROTKIN: I think that is fine.

11 THE COURT: A hearing on an intended motion to
12 convert.

13 MR. KAROTKIN: I think that is fine. I think we
14 had made progress with the FCC, and I am hopeful -- with the
15 FCC and with the carriers, and I am hopeful we can reach an
16 understanding. I think to the extent that everyone has some
17 certainty, knowing there are no certainties in the world,
18 that the 30-day period is a 30-day period because there is a
19 limited amount of money here and everyone has to work really
20 hard to make sure it works, that is fine. I would only ask
21 if we could impose upon the Court to participate by
22 telephone, it would make our lives really easy.

23 THE COURT: We could actually do the whole thing
24 on telephone if someone initiates the call and you all line
25 up who you want on it, and we will do it by telephone.

1 MR. SHAPIRO: We can set up a call-in number.

2 THE COURT: Sure.

3 MR. SHAPIRO: The other issue that we have is we
4 also have a bunch of -- your TRO that you issued on last
5 Monday will run out today. I don't know if you want to
6 extend that, because we need 24 more hours to work this out.
7 Hopefully, no one will terminate us, but it makes sense to
8 extend it to the telephonic hearing.

9 THE COURT: I will just enter an order that
10 continues it until tomorrow to whatever time we set the
11 hearing for. Now, there will be some folks that won't
12 appreciate that, but probably nobody that is integral to what
13 you are trying to work out. They will be involved in trying
14 to work it out.

15 MR. KAROTKIN: I think that's right. I think
16 most of the people we were on the phone with today.

17 MR. SHAPIRO: We spent the weekend trying to work
18 this out. It is not quite done, but I think, as Steve
19 characterized it, it's close.

20 MR. KAROTKIN: If anything materializes with
21 these IDT people, are you available this afternoon?

22 THE COURT: Yes.

23 MR. KAROTKIN: I think people would like to stay
24 here to see if something could be worked out and if possible
25 come back before Your Honor.

1 MR. KENNEY: Is Zimmerman one of the people who
2 was bidding?

3 MR. KAROTKIN: He was here last week.

4 MR. KENNEY: He never came up with anything.

5 MR. SHAPIRO: He says he is here with his money.

6 THE COURT: If you want to do the phone
7 conference at 2:00 tomorrow, we will enter an order extending
8 the TRO that was entered last Monday, and then we will take
9 off the hearing on the 20th, and then I will be here if
10 something develops with a potential buyer.

11 MR. KAROTKIN: Great. Thank you.

12 MR. KENNEY: Your Honor, I have another
13 engagement that probably will not be over by 2:00. If I
14 don't have all of my issues resolved with the debtors, I will
15 arrange for somebody from my office.

16 THE COURT: We can move it. When will you be
17 available. 3?

18 MR. KENNEY: 3 would work better.

19 THE COURT: We will make it 3 tomorrow.

20 MR. SHAPIRO: Just so Your Honor knows, we did
21 spend, to update you beyond my letter, we did spend all day
22 Friday with the Zimmerman folks trying to work out the
23 contract because we still hadn't finished with them on the
24 contract. We weren't able to resolve -- there were about
25 half a dozen pretty significant issues that still could not

1 be agreed to between the debtors, the DIP lenders, and the
2 potential buyer. And we said, look, you know, we are not
3 going to spend the whole weekend negotiating with you guys
4 when you are not telling us there is money.

5 I asked on Friday, can you provide me with at
6 least evidence that the money will be there on Monday. Give
7 me something that tells me that we should continue this,
8 because this is becoming ridiculous and we have 25 people
9 working away on this in different places. The best he could
10 tell me was that they were working with three bridge lenders
11 on a term sheet. He didn't want to give it to me.

12 Frankly, a term sheet from a bridge lender for
13 the 15 million dollars wasn't particularly useful. That is
14 where we ended up on Friday afternoon. Over the weekend, I
15 called Susheel Kirpalani, their counsel at Milbank, a number
16 of times. I exchanged a couple of voice mails. And he had
17 nothing to report to me over the weekend in terms of ability
18 of his client to raise the funds. The last I heard, they may
19 have been trying to get moneys wired from some third party
20 into a Wintel, which is the buyer's name, account somewhere,
21 and that in turn, Wintel, once it receives those funds from
22 wherever they are coming, would wire those funds to
23 Shearman & Sterling.

24 I asked them, when would that happen. They
25 couldn't answer that. I said, what about the rest of the

1 money? 15 is just a deposit, and you need a lot more money
2 to operate this company and close the deal. And he had no
3 response.

4 THE COURT: The kind of buyer you are looking for
5 may have a problem, I would think, may have some problem with
6 terms, but wouldn't be shallow on that 15 million.

7 MR. KAROTKIN: The concern that we have is that
8 you have someone who has consistently said they are going to
9 put up money. And let's say they do come up with some money
10 and you enter into a transaction which can't close for
11 another 30 days, where they are going to need more money, and
12 another 90 days where they are going to need more money, the
13 risk that doesn't show up, we are in a much worse situation
14 than we are in today. That is a big concern of ours, and
15 ought to be of the FCC as well.

16 THE COURT: Again, the kind of buyer that you are
17 looking for and need, that third-level money may not be tied
18 down, but the first and part of the second level would not be
19 a problem for them. And it sounds like what they are doing
20 is hustling your conversation to try and get somebody to put
21 up some money. The conversation isn't being seen by the
22 people that they are trying to get the money from as
23 something they want to invest in.

24 People with money, they drive deals. If they are
25 not buying the hype -- you all see that every day. There is

1 probably someone out there that had the money that they were
2 talking to but they are just not liking what they have to do
3 to make this deal.

4 MR. SHAPIRO: This is the only one that actually
5 got a DIP. The reason it did is everyone believed it could
6 be reorganized or sold.

7 THE COURT: That was the big thing they were
8 talking about in the Journal.

9 MR. KAROTKIN: The first and last DIP.

10 MR. KENNEY: Maybe the Journal writer knows where
11 the money is.

12 THE COURT: Actually, the numbers aren't that bad
13 for what you would get if you knew how to operate it. If you
14 had some foresight that you could actually make it work, this
15 is like salvage. It's not that bad. But I guess, who is out
16 there to operate it? The first round couldn't do it. There
17 won't be many lenders coming in on these.

18 MR. KAROTKIN: There aren't many DIPS that don't
19 get paid. First of all, there are not many DIPS that don't
20 get paid in full and hardly any that are going to get 20
21 cents on the dollar or whatever, maybe 30 cents.

22 THE COURT: DIPS don't lose money. But there is
23 risk.

24 MR. KAROTKIN: We know that now.

25 MR. KENNEY: This is the case that proves the

1 rule.

2 THE COURT: This proves the rule. The worst part
3 of this case, you took forced financing for a week, too,
4 which will make DIPS wonder.

5 Well, okay. I will be around if something
6 breaks. I think you could tell those folks I will be real
7 focused on dollars today, and I think the three or four
8 levels they need dollars, not just today. And absent that,
9 all those other folks out there, their problems are going to
10 be dealt with by a trustee. There is nothing I can tell
11 them. Mr. Kenney is going to work to get us something here.

12 MR. KENNEY: We will try to get a trustee in real
13 quick. One of the things Mr. Shapiro points out was the need
14 to, we will have a trustee with the authority and directive
15 to operate the company, but the reality is the learning curve
16 is going to be very steep. And I think it's a given at this
17 point that at the 341 meeting the creditors will elect their
18 own trustee to replace the interim trustee. So I think what
19 they want to do is accelerate the process. And we had some
20 discussion about that, Rule 2002 says it is a 20-day notice
21 and it kind of falls into a twilight zone of whether the
22 Court can shorten that period. I am going to let them do the
23 selling job on that and not take a position.

24 MS. MORGAN: Your Honor, I don't think it is a
25 twilight zone. I think 9006 says reduction is permitted in

1 certain circumstances. It cites the rules under which
2 reduction is not permitted. And the scheduling of a 20-day
3 notice of a 341 is not listed there. That means reduction is
4 permitted. I think we would ask the Court for a motion to
5 shorten that period so that that 341 meeting could be held in
6 about a week's time. We would publish it on our website. We
7 haven't thought about how else we could publish it.

8 MR. SHAPIRO: Put out a press release.

9 MS. MORGAN: Yes, to give people notice so they
10 could elect a trustee promptly.

11 MR. KENNEY: We would ask for those kind of
12 safeguards.

13 THE COURT: Those safeguards and take no
14 position -- right, which will work.

15 MR. SHAPIRO: We can build that all into the
16 order.

17 MS. MORGAN: If I may clarify. There are a
18 couple agreements that we have in place, for instance,
19 assumptions and assignments with consent, there is one that I
20 have here with me today that would result in, for instance, a
21 waiver of a large administrative claim. To the extent we can
22 get those approved, can we just submit those if they are
23 consensual?

24 THE COURT: Anything that is consensual, just
25 send over, we will get them signed and stop the clock, or

1 avoid a claim, if we can. If they are consensual, no one
2 cares.

3 MS. MORGAN: As far as the motion to convert, is
4 the U.S. Trustee's motion --

5 MR. KENNEY: We will move orally.

6 MS. MORGAN: And we will file the motion to
7 shorten then.

8 MR. SHAPIRO: We will prepare a consensual order.

9 MR. KAROTKIN: I just have one question. I
10 assume when we go outside Mr. Zimmerman is going to say, you
11 know, I have a bid to make, I want to make a bid --

12 THE COURT: This isn't an option, that's what you
13 tell him.

14 MR. KAROTKIN: I assume at this point a
15 determination of whether to consider these things rests with
16 the debtor and the creditors.

17 THE COURT: The Judge doesn't get involved in
18 deciding whether he is -- doesn't take bids and doesn't
19 decide whether, you know, they are of some value to the
20 estate.

21 He has to sell the debtor. But the motion that
22 was pending is now denied as moot.

23 Now, the debtor can get to reopen that motion,
24 what do they call it, reconsider, I mean that ruling, that it
25 is denied as moot, but he has to, I assume the debtor would

1 have to be convinced that there was some reason to move
2 that. Somebody out there in the world who wanted to be in
3 the game can't come in and do that.

4 Does anybody disagree with that?

5 MR. KAROTKIN: No.

6 MR. SHAPIRO: No.

7 THE COURT: I told Ms. Morgan when I was worried
8 about scheduling or concerned about scheduling that unless
9 there was some premise to the sale motion, that the hearing
10 was canceled, because that's what I had before me, a sale
11 motion. And that's what I did.

12 Now I am going to deny the motion on the record
13 as moot, and you can move for me to reconsider that ruling on
14 some basis. But there is nothing there now. He should be
15 talking to the debtor and to you.

16 MR. KAROTKIN: Okay. Thank you.

17 THE COURT: Our friend from the Trustee's Office,
18 whose motion to convert is just hours away from being
19 considered and ruled on.

20 MR. SHAPIRO: The TRO --

21 THE COURT: I will do that on my own, based on
22 the conversation we had here that you need time -- why I got
23 you in here was scheduling and what was going to, you know,
24 be your idea about going forward. And based on what you told
25 me, I will extend that for 24 hours, to our 3:00 hearing

1 tomorrow, with the understanding, as I hope I said before,
2 that all the parties subject to that restraining order are
3 working with you to reach something consensual so they are
4 not being in any way unduly prejudiced. If they can't agree
5 with you, we will hear them tomorrow at 3:00. But that's
6 unlikely. I would hope it's unlikely. Hopefully, they are
7 going to work to make this a smooth landing -- there is no
8 smooth landing here -- but so that no one has to suffer a
9 fatality, is the hope.

10 MR. KAROTKIN: Can we go off the record a
11 minute?

12 THE COURT: Sure.

13 (Discussion off the record.)

14 MS. MORGAN: I guess those people want to hear
15 what is happening and we are telling them what is happening.

16 THE COURT: It is over. There is no sale. There
17 is nothing to do. Right?

18 (Conference in chambers adjourned.)

19 (The following took place in open court, at
20 approximately 5:50 p.m.).

21 THE COURT: Proceed, please.

22 MR. SHAPIRO: Good afternoon, Your Honor. Mark
23 Shapiro from Shearman & Sterling for Winstar Communications,
24 debtors.

25 Your Honor, after our chambers conference earlier

1 this afternoon, during that chambers conference, a party
2 named IDT Corporation, who had been a party that the debtors
3 had been having on-and-off discussions with through the
4 entire auction process but whom debtors could not reach
5 agreement with, made an offer to the financial advisors to
6 the debtor, Blackstone. Since that time we have worked to
7 try to flesh out all the terms of that offer.

8 I think we have what I will call the principle
9 points agreed to in principle but not in writing. And what
10 we would like to do is have the attorney for IDT Corporation
11 present those to the Court so that the Court understands
12 their offer. We would work this evening to try to finish a
13 contract with them and come back at 3:00 tomorrow to see
14 whether in fact we have a deal, and if we don't have a deal
15 or it is not an agreed upon deal that we have a meeting of
16 the minds on, then we would go back to the plan we discussed
17 with Your Honor in chambers earlier today.

18 We believe that this deal, if we could consummate
19 this deal, would be beneficial to the estate, would
20 potentially be beneficial to some of the employees, and would
21 allow, certainly allow an orderly transition period for
22 customers.

23 With that, I would like to have David Albalah,
24 counsel for IDT, present to the Court the details of their
25 offer. We will supplement that to the extent it differs from

1 our understanding. And then what I would propose we do is
2 adjourn to the offices of Young Conaway to see whether we can
3 work out between now and 3:00 p.m. a contract and management
4 agreement and order that we would present tomorrow at 3:00
5 p.m. in court.

6 THE COURT: All right.

7 MR. HARRINGTON: Good afternoon, Your Honor.
8 William Harrington, Duane Morris & Heckscher. I would like
9 to move the admission of David Albalah. His pro hac motion
10 was previously filed with the Court electronically but has
11 not been signed yet.

12 THE COURT: I will grant the application.

13 MR. ALBALAH: Thank you, Your Honor. Good
14 afternoon, Your Honor. Thank you for your patience. David
15 Albalah from McDermott, Will & Emery on behalf of IDT
16 Corporation.

17 As counsel for the debtor just communicated, we
18 have spent a fair amount of time today, and I do believe we
19 have an agreement in principle. What I will do is go through
20 the salient points. At the conclusion thereof, I will ask
21 Your Honor to so order the record.

22 The transaction is as follows --

23 THE COURT: Let me understand something. When
24 you suggested I would so order the record, my understanding
25 is that, and because of the history here, that I would listen

1 to this proposed offer, and then, because it would be
2 something that no one had notice of, we would have the record
3 on this offer closed, come back tomorrow at the hearing we
4 thought we were going to have today, and it would be in
5 court. We were going to have a telephonic hearing about a
6 conversion. But we would come back tomorrow, and then I
7 would listen to anybody that wanted to be heard on this
8 proposed transaction, and then at that point I would consider
9 approving this transaction. Otherwise, nobody else had
10 notice of what you are going to tell me, and I am hearing it
11 for the first time.

12 Mr. Shapiro, is that what you were thinking?

13 MR. SHAPIRO: Yes. I am not sure what Mr.
14 Albalah meant by being so ordered. I think this is just an
15 explanation to the Court of what is to come for tomorrow.
16 Tomorrow's hearing would be a presentation of the contract
17 and the order. Yes, I agree with Your Honor's remarks.

18 MR. ALBALAH: Part of the concern, Your Honor --
19 I don't want to dwell on it now, I think we should go through
20 the points and circle back to this. Part of the concern, and
21 I want to consult with my client, is whether the debtor is
22 shopping this thing. We haven't discussed the breakup fee or
23 anything along those lines. So we expect this to be the
24 deal. We will circle back with Your Honor, with Your Honor's
25 permission, to get comfort in that regard.

1 The transaction would be as follows.

2 IDT Corporation or its designee would purchase
3 all of the assets, free and clear of all liens, claims,
4 interests, and encumbrances, except for specifically
5 delineated assets. And I will tell you what they are. The
6 purchase price will be 38 million dollars cash or 30 million
7 dollars cash plus Class B IDT common stock in the value of
8 12.5 million, measured based upon the last seven trading days
9 from today.

10 If IDT does not get a registration within 60
11 days, then the debtor would be able to put that stock
12 interest on IDT for ten million dollars cash. So either it's
13 38 million dollars cash, or 30 million dollars cash plus 12.5
14 million dollars in stock, or 40 million dollars cash.

15 MR. JONAS: I think that is the choice.

16 MR. ALBALAH: The debtor will elect as to whether
17 it wants the cash option or the cash and stock option. It is
18 at the debtors' election. All or nothing.

19 The excluded assets are Lucent litigation,
20 Office.com, Aon Put, Wamnet (phonetic) Debt & Equity,
21 RadioNote, TVVideo Note, avoidance actions, D&O claims, any
22 prepaid workers' compensation, tax refunds, if any, cash as
23 distinguished from accounts receivables, claims against
24 Savis, I believe that's S-a-v-i-s, claims against Velocita,
25 V-e-l-o-c-i-t-a, PSINet Hong Kong, excluded subs, that's

1 it -- the above net claims, correct.

2 Those are the excluded assets. Everything else
3 is to be purchased, and again free and clear of all liens,
4 claims, interests and encumbrances. And we will have an
5 order obviously that I will comment on.

6 The debtor -- I am going through this in no
7 particular order.

8 The debtor intended to notice termination to
9 customers. The debtor will not do that. My client will have
10 the right to determine the timing of the sending of that
11 notice. My client will be obligated to fund costs going
12 forward for the transition period pending regulatory, FCC and
13 state regulatory approvals.

14 The only exception to the concept of my client
15 controlling when the notice is circulated, if at all, is to
16 the extent that there is any Hart-Scott requirement. If
17 there is a Hart-Scott requirement, and we determine that
18 there is a Hart-Scott requirement, then the notices will go
19 out Thursday.

20 There would be in the order, and in appropriate
21 other documents, clarity with respect to no employee
22 liability whatsoever. My client, in addition to the general
23 free and clear, assumes no liabilities with respect to
24 employees of any kind or nature.

25 There is no out for regulatory consents. If the

1 FCC, if the state regulatory authorities, do not consent to
2 the transaction for any reason, there is no out.

3 To the extent that the licenses have any value
4 and proceeds are realized, that would be part of the assets
5 purchased.

6 The parties contemplate that this Court would
7 issue an order similar to the order that I understand is in
8 effect, compelling service providers of all nature and kind,
9 including telecom companies, landlords, et cetera, to
10 continue providing services during the transition period.
11 But my client will pay all those services. My client may
12 negotiate discounts, may negotiate terms, but there is a
13 guarantee for the payment of that money.

14 In addition to the purchase price, there is a
15 five-percent interest that the estate would get in an entity
16 to be formed by my client. That five percent the estate
17 would share, as, when, and if my client gets back its
18 investment in an unknown amount at this point in time. We
19 know what we are making in terms of, in other words, cash and
20 stock. We can quantify that. We can't quantify the costs
21 that my client will pay to keep this alive. As, when, and if
22 all of those costs come back, then the estate will have a
23 five-percent interest in the upside.

24 It is my understanding that the contemplation is
25 that the case may convert from 11 to 7. We would have

1 assurances that this agreement is binding upon the Chapter 7
2 trustee and the estate.

3 It's an as is, where is acquisition, with no reps
4 and warranties.

5 My client has not yet determined the extent to
6 which it intends to seek approval and assignment of executory
7 contracts and nonresidential real property leases. To the
8 extent it does not, it is the understanding of the parties
9 that the estate will have the burden, financial or otherwise,
10 to physically deliver the assets that my client is buying.
11 So, for instance, if there is a landlord with a lease that is
12 not assumed and assigned, and the landlord has a piece of
13 equipment on the premises, we are buying that equipment free
14 and clear. And the order, as the parties contemplate it,
15 would provide protection to my client that it can get that
16 equipment.

17 If I didn't mention the time period, in terms of
18 the continuing order of Your Honor keeping the going-forward
19 service providers providing services, it's the parties'
20 understanding that that order would provide the time period
21 of the next 60 days.

22 Both parties will work diligently starting
23 immediately at the conclusion of this hearing to paper the
24 transaction. In addition, the estate will cooperate and use
25 its best efforts to assist the buyer in terms of getting

1 regulatory approvals and the like.

2 My firm is holding 15 million dollars cash in an
3 escrow account. I will work with debtors' counsel to work
4 out an escrow agreement. Upon conclusion and the
5 satisfactory manner of that, we will forward that money to
6 the estate's counsel.

7 We are going to work on a management agreement,
8 which I won't burden the record with, that is necessary for
9 regulatory reasons and the like.

10 (Pause.)

11 MR. ALBALAH: Thank you, Your Honor.

12 The 30 million dollars to cover -- as I said, the
13 buyer will be responsible for the ongoing expenses of the
14 business. There will be 30 million dollars regarding that
15 that we will put in escrow. That doesn't mean it will cost
16 30 million. It may cost less or more. We are going to put
17 30 million dollars in escrow. And I neglected to mention
18 that earlier.

19 The purchase price, whatever form it comes in,
20 cash or stock, cash, or cash and stock, will be paid at
21 closing in an irrevocable manner.

22 I think I used the word guarantee in terms of the
23 estate delivering the assets. And if there is a piece of
24 equipment, and the landlord doesn't want it, guarantee is the
25 wrong word. It is the intent they will get all those

1 assets. If there is a cost in terms of physically removing
2 it, the buyer would pay those costs.

3 Your Honor, if I may, Howard Jonas, the chairman
4 of the company, chairman of the board of IDT, is here. May
5 he address Your Honor very briefly?

6 THE COURT: Sure.

7 MR. JONAS: Thank you.

8 I, fortunately, have never been in court before.

9 I think this is a very good deal for the public,
10 because I think there is a need for competitive telephone
11 service. And in our diligence on the company, we found an
12 Intelligent, which is a company that we previously controlled
13 and made an offer for, even though unfortunately it wasn't
14 accepted at the time, and the business went down the hill,
15 but the business was not put together properly.

16 We do over a billion and a half dollars in
17 telecom business a year. We are noticing a technical
18 infrastructure and a business infrastructure so poorly
19 operated. It is our hope -- what we are planning to do is
20 one of two things. We will probably have to terminate a lot
21 of the clients who are on net now, but we will be giving them
22 sufficient time to get out so they can get other services.
23 We are hoping a lot of the other services, like long-distance
24 services and data services and so forth from our company, it
25 is our intent to restart the business in the proper way with

1 the proper knocks in the proper cities, so we can provide the
2 service to the public, and hopefully there will be a number
3 of clients that we will be able to keep on who are already
4 on.

5 So I think approving this order serves the dual
6 purpose of, I can't say that the creditors are made whole
7 because they are six billion dollars in the hole, but it does
8 get them money, it does see that the public is not left
9 without telephone service for a long time, and somebody is
10 not forced to pay for it who doesn't want to be a creditor
11 anymore, and it does give a reasonable chance that we will be
12 able to continue operating these kind of services into the
13 future.

14 The last thing is our company has over a billion
15 dollars in cash, over a billion dollars in paid-up assets.
16 We turn a profit of close to a hundred million dollars a
17 year. We have zero debt. We will easily be able to carry
18 through and finance this acquisition and see that all the
19 commitments that our counsel made are in fact complied with.

20 I hope this doesn't have to go on to tomorrow.
21 You can order it tonight.

22 But that's all I want to say, thank you.

23 THE COURT: Thank you, Mr. Jonas.

24 MR. SHAPIRO: Mr. Albalah also wanted me to put
25 on the record that they will have the ability to speak with

1 management and have input to speak with management tomorrow
2 morning, which we agreed to.

3 I think, notwithstanding the fact that all, I
4 will call it, the salient points have been put on the record,
5 obviously, until we have a contract that is agreed to and
6 signed by the buyer and debtor, there is no agreement. So
7 what we would try to do is between now and 3:00 p.m. tomorrow
8 complete a contract. We have actually already worked on
9 contracts, obviously, with them and other people, so we have
10 a basic form of contract that we will work on tonight, see
11 whether we can reach an agreement, and be back here tomorrow
12 to see whether we can get it approved.

13 THE COURT: All right. Mr. Kenney, did you have
14 anything you wanted to add?

15 MR. KENNEY: I think, Your Honor, what we have
16 heard is good. I am obviously going to have to wait and see
17 what develops between now and 3:00 p.m. tomorrow, at which
18 point I would make any comments I have and anyone else would
19 have the opportunity to do so then.

20 THE COURT: When would you anticipate, Mr.
21 Shapiro and Mr. Kenney, because I want you to review any
22 proposed agreement, that that would be available for people
23 to review? We are going to come at 3. I would like to have
24 a little time.

25 MR. SHAPIRO: In fairness to everyone, I would

1 think by 12:00 tomorrow we need to have a contract
2 available. We will send Your Honor whatever we have or
3 inform the Court we don't have an agreement. But I think at
4 that point anyone who would like a copy ought to get in touch
5 with Pauline Morgan at Young Conaway, get her e-mail address,
6 so we have it in e-mailable form so we will e-mail it to
7 people starting at noon tomorrow.

8 THE COURT: So we have the principles of
9 agreement. And you are going to work to get it to a document
10 by noon tomorrow, so that it is available for purposes of the
11 3:00 hearing.

12 MR. SHAPIRO: As well as the form of order we
13 would ask Your Honor to sign.

14 THE COURT: The proposed form of order. Mr.
15 Kenney?

16 MR. KENNEY: That is fine, Your Honor.

17 MS. NEWELL: Hello, Your Honor. Margaret Newell
18 from the Department of Justice on behalf of the FCC and the
19 GSA.

20 Obviously, my comments about the order can wait
21 for tomorrow. But I wanted to clarify, there is a hearing
22 scheduled tomorrow at 3:00 before Your Honor, but given the
23 fluidity of events today, there wouldn't be a hearing before
24 that time, would there?

25 THE COURT: No. Before 3:00 tomorrow on this

1 matter, no.

2 MS. NEWELL: Thank you, Your Honor. Just
3 checking.

4 THE COURT: Okay. The only thing that I am going
5 to do between now and 3:00 tomorrow is, or I have already
6 done it, I have extended the temporary restraining order that
7 was entered last week till 5:00 p.m. tomorrow, so that we
8 would have an opportunity, in the first instance, to proceed
9 to a conversion, but now to proceed to consider this
10 agreement.

11 So that's the only thing I am going to do between
12 now and tomorrow at 3:00.

13 All right.

14 MR. GWYNNE: Your Honor, Kurt Gwynne on behalf of
15 MCI Worldcom.

16 I understand Your Honor is continuing the TRO.
17 Notwithstanding that, may I be heard on that issue, Your
18 Honor, just to create a record? I have talked with my client
19 about the potential -- well, I have put in a call to the
20 client about the potential for appealing that. The client is
21 on a flight to Chicago. I would like to make a few
22 statements for the record.

23 THE COURT: Sure.

24 MR. GWYNNE: Thank you. First of all, Your
25 Honor, as I think Your Honor knows, I have a tremendous

1 amount of respect for this Court and am proud to be a member
2 of the Bar of the District Court for the District of
3 Delaware.

4 THE COURT: You must really want something.

5 MR. GWYNNE: Your Honor, I have significant
6 concerns about the manner in which the original TRO was
7 entered and the manner in which the TRO was continued today.
8 Under Rule 65, it is clear that in order for a TRO to be
9 issued ex parte, counsel is supposed to exercise, quote, all
10 reasonable efforts, close quote, to notify opposing counsel.

11 Although I had called and left messages for
12 debtors' counsel the night before, just curious about the
13 sale process, I was never told about any TRO process. And in
14 fact, when the motion was filed, although it wasn't filed
15 until 12 or 18 minutes before the hearing, it obviously was
16 prepared sometime during the day, as it was five or six
17 pages, had a four-page affidavit. No telephone call was ever
18 made to me.

19 I think with respect to that, Your Honor, that
20 TRO was improperly granted for that reason, should not have
21 been issued ex parte. And also, it is my understanding,
22 since I was not at that hearing, that the TRO did not even
23 issue at the hearing but issued as a result of a conference
24 in chambers.

25 We filed --

1 THE COURT: I think, actually, it issued at the
2 end of a Court hearing, when I asked Shearman & Sterling to
3 present it predicated on the argument of the FCC.

4 MR. GWYNNE: Your Honor, again, without
5 sufficient notice, I am not really sure what happened, unless
6 and until we obtain a transcript. Then when the hearing was
7 scheduled for today, we filed an objection, which I don't
8 know if Your Honor had time to read it. I realize it was on
9 file only two hours before. But today, we understood that
10 the carriers, many of which are here today, were coming to
11 Court and would have the opportunity to have some discussions
12 with Your Honor about the TRO and/or the sale or winddown
13 process and what, if anything, the carriers were willing to
14 do.

15 Debtors' counsel came out of chambers and advised
16 us that the TRO was going to be continued.

17 Your Honor, I think, respectfully, with the
18 carriers being here in court, and debtors' counsel knowing we
19 were in court, I don't know if Your Honor knew, we should
20 have had an opportunity for a hearing, which hearing should
21 have been an evidentiary hearing, on whether or not the TRO
22 should have continued till tomorrow.

23 Debtors owe, under our original adequate
24 assurance agreement, 13.9 million to Worldcom. Under the
25 modification agreement, where we made significant concessions

1 with the debtor, it is not scheduled to be heard until the
2 20th, the debtors would only owe approximately 2.9 million,
3 still a significant amount owed under the adequate assurance
4 stip as modified by what I call the modification agreement.

5 Under the adequate assurance, which was a
6 stipulation and order, we have the right to terminate based
7 upon certain postpetition defaults. Not only was that an
8 agreement of the parties, but it was an order of this Court,
9 which no one has filed a motion to vacate, to modify, nor do
10 we think that that obviously would be the appropriate relief.

11 There is no adversary proceeding here, Your
12 Honor. We have a TRO that has been issued based upon a
13 motion for a TRO and now a motion for a preliminary
14 injunction.

15 Injunctive relief requires an adversary
16 proceeding under Rule 7001, Subsection 7. And in In Re
17 Connecticut, Your Honor held that a hearing was enjoined base
18 upon an oral motion before Judge Walrath that a lack of a
19 required adversary proceeding was a basis alone to deny the
20 request for injunctive relief.

21 THE COURT: Are you of the view that, for
22 instance, your client could terminate service tonight absent
23 that temporary restraining order?

24 MR. GWYNNE: No, Your Honor. We have a two-day
25 notice period under our contract with the debtor and we have

1 never sent a termination notice, to this day, we haven't.
2 And we were surprised to be included in the ex parte motion,
3 when we hadn't even issued a termination notice.

4 THE COURT: But you could do it within 48 hours.

5 MR. GWYNNE: I believe, Your Honor, under our
6 adequate assurance stipulation, which specifically provides
7 we can terminate in I think it's two business days or 48
8 hours notice, yes, we can.

9 Now, I understand the FCC has raised some issues
10 about termination periods and notice. Under Section 214 of
11 the Telecommunications Act, the debtor has a duty to give
12 notice to its end users. We are not providing service to the
13 end users. This is carrier-to-carrier service. There is no
14 requirement that we give any period of notice to the debtors
15 unless it's required by some applicable tariff or contract or
16 what have you.

17 So we do believe that we could terminate in two
18 business days notice. In fact, Your Honor, we have done that
19 in many other cases where there have been defaults, and other
20 cases that have sort of headed south the way this one has. I
21 do believe we could. I am not asking Your Honor to give us a
22 right we don't have.

23 THE COURT: I am just trying to understand,
24 because the FCC takes a different view. And what I could do
25 is I could schedule a hearing to give you an opportunity to

1 be heard against the FCC's issues and in the meantime leave
2 the order in place, and we could have a quick hearing,
3 because I think that's what you are asking for, an
4 opportunity to be heard, because of the disagreement that
5 your clients would have with the position that was put forth
6 by Mr. Scheimer (phonetic) on behalf of the FCC. Then I
7 could resolve that, the tension between those positions. I
8 wouldn't be able to do it at 3:00 tomorrow, just like I
9 wasn't able to do it today, because I only scheduled the sale
10 hearing for today. But we could do it certainly before the
11 end of the week and have that heard.

12 MR. GWYNNE: We would appreciate the opportunity
13 to do that. But with respect to whether or not the TRO
14 should issue, again, we haven't given the termination
15 notice. Whether or not the TRO should even be continued,
16 which would involve those issues, which we would be happy to
17 address at a hearing, would also involve whether or not --
18 again, Your Honor held in In Re Connecticut that the Bankruptcy
19 Court couldn't use 105 to overrule the utilities' rights
20 under 366, albeit for a short time. That was only a four-day
21 injunction that Judge Walrath entered. Your Honor properly
22 reversed her for doing so, enjoining a utility in violation
23 of Section 366. I think that's the same thing that is going
24 on here.

25 THE COURT: I don't think anybody in that case,

1 and in my mind, at least at this point, who is potentially
2 distinguishable ever raised what Mr. Scheimer raised.

3 MR. GWYNNE: Which is, Your Honor?

4 THE COURT: His issue is about the amount of time
5 necessary for termination. I understand your view that you
6 are not a provider in the sense that the debtor is and that
7 your relationship with the debtor is the debtor has the
8 obligation.

9 MR. GWYNNE: Correct.

10 THE COURT: But I don't recall the FCC appearing
11 in Judge Walrath's case.

12 MR. GWYNNE: I don't believe so, Your Honor.
13 Frankly, as I understand it, this is the debtors' motion, not
14 the FCC's motion anyway.

15 THE COURT: Absolutely. But the FCC weighed in
16 on their behalf, agreeing with what other folks wanted to
17 happen when we had the hearing on December 10.

18 MR. GWYNNE: Your Honor, the only thing we would
19 ask is during that time period prior to the hearing, who is
20 going to pay the charges that are being incurred? We think
21 that we are entitled to that. While Rule 65 provides that
22 the Court can enter injunctive relief and the debtor not have
23 to post a bond, if Your Honor is ordering us to provide
24 services to the GSA or some government entity or
25 quasi-government entity --

1 THE COURT: Have you met Mr. Jonas?

2 MR. GWYNNE: Yes, Your Honor.

3 THE COURT: As I understand it, if his
4 transaction is approved tomorrow, he wants to talk with you
5 about that very issue.

6 MR. GWYNNE: But I don't understand that he was
7 going to pay for postpetition charges that have been incurred
8 but not paid and enter a default now. They are talking about
9 going forward, which I assume is from tomorrow until sometime
10 forward.

11 THE COURT: You are talking about since December
12 10th.

13 MR. GWYNNE: There is from the 10th to today,
14 Your Honor. There is also charges that are due and owing
15 from prior to the 10th as well.

16 THE COURT: I am only liable from the 10th.

17 (Laughter.)

18 I think I have immunity.

19 I am taking this seriously. I am trying to
20 understand. But I can't deal with before the 10th, you know,
21 in the context of what you are presenting today. If the sale
22 is approved tomorrow, Mr. Jonas' transaction takes care of
23 that. So we are talking about from the 10th to either today
24 or tomorrow at 3:00.

25 MR. GWYNNE: Whenever the hearing is. Or if the

1 sale goes forward, right. That's correct, Your Honor.

2 THE COURT: What we should do is, I understand
3 MCI is not going to turn anyone's phone off or service off
4 between now and tomorrow at 3:00.

5 MR. GWYNNE: Correct. We wouldn't have the right
6 to do it.

7 THE COURT: Even under your analysis of the two
8 days. So that is kind of like a no prejudice, if I enter the
9 order, because I am concerned about everybody else.

10 MR. GWYNNE: You could carve Worldcom out. There
11 is precedent, with all the attorneys in this room, debtors'
12 counsel, somebody will be saying to Judge Robinson, this
13 order is the standard injunction, Judge.

14 THE COURT: I don't even understand that word,
15 precedent.

16 MR. GWYNNE: I realize it doesn't have any
17 binding precedent.

18 THE COURT: It really doesn't. And this case is
19 so unusual, because of the public interest, that I would be
20 literally shocked if another judge out there said there was
21 something here to be followed in the orders I have issued to
22 get us to this hearing tomorrow at 3:00. I guess that's
23 possible. But actually, there is an opinion out there by
24 Judge Mansley in an asbestos case that talks about there is
25 no precedent to be followed in the same court or in different

1 courts at the same level. But there is no precedent here.
2 This is truly a unique case.

3 MR. GWYNNE: Since we won't be terminating, we
4 may issue a notice, but there is not going to be any
5 termination before tomorrow, could we have the hearing
6 scheduled?

7 THE COURT: What I am thinking about doing is
8 giving you a hearing tomorrow after the sale hearing, or the
9 next day. I don't know how long the hearing will take
10 tomorrow.

11 MR. ALBALAH: Your Honor, may I suggest, to
12 address Mr. Gwynne's concern with respect to the injunction
13 as distinguished from with respect to getting payment from
14 the 10th until the closing of our transaction, I think his
15 concern is whether the injunction that we have asked Your
16 Honor to continue is permissible from a procedural and
17 substantive standpoint. Therefore, I think it is necessary,
18 given that a condition precedent to our deal is to have the
19 continuation of that injunction, that this hearing be
20 scheduled at the same time or before our transaction is
21 hopefully approved.

22 Do you understand what I am addressing, Your
23 Honor?

24 MR. GWYNNE: We could go first at 3:00.

25 THE COURT: I understand. But I just see it a

1 little differently. I would take it afterwards, particularly
2 since you are going to be negotiating with them, you would
3 probably want it afterwards, too, I would think, because we
4 might have a different situation.

5 MR. GWYNNE: I understand.

6 THE COURT: What I am going to do is schedule you
7 for tomorrow for the agenda, but presently, my thought is
8 that I will hear any application you have subsequent to the
9 sale application.

10 MR. GWYNNE: Thank you very much, Your Honor.

11 THE COURT: Again, I wanted to get your position
12 clear and have some reference to what occurred previously.

13 Is there anything else you want to put on the
14 record with regard to your client's position?

15 MR. GWYNNE: No, thank you, Your Honor.

16 MR. PALACIO: Good evening, Your Honor. Ricardo
17 Palacio from Ashby & Geddes on behalf of Williams
18 Communications as well as Time Warner. I am going to address
19 the Williams Communications/Time Warner position as merely a
20 joinder to the motion to vacate and the objection to
21 preliminary injunction.

22 To start off, I would like to join in and
23 basically echo the comments made by Mr. Gwynne. I think
24 Williams Communications, it is one of the largest carriers to
25 the debtors, has much at stake here, to say the least, as

1 such incorporates the comments of Mr. Gwynne.

2 Your Honor, there is one spin with respect to
3 Williams Communications that has been different from
4 Worldcom, and that is with respect to the notice. In our
5 motion/objection, if you will, again, I don't know if Your
6 Honor had an opportunity to review it, but the one difference
7 I am referring to is that prior to the issuance of the TRO,
8 Williams had terminated its obligation to provide further
9 services to Winstar. Subsequently, thereafter, after
10 terminating its obligation, it commenced the issuance of
11 notice to the appropriate regulatory agencies, both state and
12 federal level, and the time period runs anywhere from ten to
13 30 days, depending on the jurisdiction.

14 Some of those notices have already gone out. The
15 impact of the TRO on those notices -- we understand, Your
16 Honor, we are not to cut off any service. However, Your
17 Honor, we believe that this puts a little bit of a different
18 spin on what Worldcom has asserted, and we would again like
19 the opportunity, as I am sure many other carriers, to come
20 forward before Your Honor and seek a vacation, if you will,
21 of the TRO.

22 Quite frankly, we have the same issues with the
23 postpetition obligations, as well as the debt that is
24 incurring each and every day at this pace, we are incurring
25 approximately \$170,000 a day that goes unpaid. I think there

1 are some issues that go to the proposed, quote-unquote,
2 selling and terms of the deal, as far as any assurance of
3 being paid on a going-forward basis.

4 That is what I wanted to get on the record. We
5 would request also that we be heard prior to the sale itself.

6 THE COURT: Thank you.

7 MR. KIRPALANI: Good evening, Your Honor.
8 Susheel Kirpalani of the firm Milbank Tweed Hadley & McCloy.
9 I will be very brief, Your Honor. We appreciate the Court's
10 indulgence and your expertise in trying to facilitate this
11 transaction.

12 I wanted to confirm, Your Honor, that other
13 competing bidders will have an opportunity to outbid IDT's
14 bid provided that their 15-million-dollar deposit is within
15 Shearman & Sterling's account prior to the hearing tomorrow.

16 We have, we believe, fully negotiated a purchase
17 agreement that has been circulated to debtors' counsel as of
18 this morning. And subject to understanding the terms and
19 conditions of the competing bid, I will contact Ms. Morgan
20 from Young Conaway. We just wanted to make sure the record
21 was clear with respect to competing bidders.

22 THE COURT: I don't want to get into that part of
23 it because I think it would be inappropriate. But I
24 assume -- I don't know anything about this -- I was told that
25 there was no consummated agreement. But if there was, you

1 should be talking with Mr. Shapiro. And if there is 15
2 million dollars or whatever the conditions were that's been
3 deposited or wired as we were talking about a week ago and
4 that came before me, there were two competing bids, then I
5 would have to make a decision between them.

6 But I am not going to get into the detail of
7 where you are with Mr. Shapiro and the debtor. In my view,
8 nobody is foreclosed, because I can't do that. And if you
9 are not able to talk to Mr. Shapiro because, for whatever
10 reason, you think that you have a better offer, I assume you
11 will be here at 3:00 tomorrow to tell me what a terrible deal
12 the debtor has negotiated and why I shouldn't approve it.

13 MR. KIRPALANI: We hope to be, Your Honor. Thank
14 you.

15 MR. SHAPIRO: Just to clarify the record. I
16 don't think Mr. Kirpalani means to suggest that we had a
17 fully documented agreed-upon contract. As he knows, there
18 are at least half a dozen or more issues that we have been on
19 the phone discussing since last Monday that haven't been
20 resolved. So I don't think --

21 THE COURT: As I understood it, the biggest issue
22 was they couldn't come up with the money.

23 MR. SHAPIRO: That was a really big issue, Your
24 Honor. They didn't come up with the money nor have they come
25 up with the money.

1 THE COURT: So you decided it wasn't worthwhile
2 to keep talking.

3 MR. SHAPIRO: We decided to suspend discussions
4 about 7:00 Friday night until they could show us that they
5 actually had the money. Unfortunately, they didn't today
6 come up with the money. I think, more importantly, if they
7 were to come up with the money between now and when we come
8 to Court tomorrow, that's just one, as Your Honor has heard
9 before, that is just one segment of this transaction. As has
10 been expressed by IDT, there is a need to be able to show
11 that the purchase price can be paid and that the operations
12 can be funded, which are equally important.

13 THE COURT: You would understand that because you
14 would be trying to knock out Mr. Jonas' company.

15 MR. KIRPALANI: That's correct, Your Honor.

16 THE COURT: He has represented that he has got
17 the wherewithal to fully perform. But it would probably
18 behoove you, Mr. Shapiro, just to listen about those other
19 five or six issues, so that if you come tomorrow and you are
20 supporting Mr. Jonas' company's bid, that you are at least
21 prepared for what others might claim to be a better
22 transaction.

23 MR. SHAPIRO: What I would propose, since there
24 obviously is a limited period of time between now and 12:00
25 tomorrow when we still have to try to finish a contract, and

1 we have been talking to his client now for a few weeks, we
2 are going to present a contract, as I said, at noon
3 tomorrow. Anyone who is interested in bidding can bid off
4 that contract. If they want to change the contract, they can
5 describe it in court tomorrow. The IDT contract will be the
6 contract offered which other bidders can bid off, not the
7 current contract that we have been negotiating with his
8 client, because unfortunately his client didn't show up with
9 the money with which we were going to do a deal.

10 THE COURT: That is all you are asking for.

11 MR. KIRPALANI: Yes, Your Honor. It is subject
12 to understanding the agreement with IDT. Quinn Telecom
13 Holdings believes it is much more of a going-concern offer.
14 The five or six points that Mr. Shapiro mentioned were fully
15 discussed on Friday with Blackstone and Shearman & Sterling.
16 And what I meant earlier with respect to we believe those
17 issues had been resolved, in terms of documenting and
18 papering it, the agreement we circulated this morning covered
19 our offer, and we have not heard back obviously because there
20 was a lot of dealings going on today.

21 But we will certainly look at the IDT agreement.
22 If it fits outside the liquidation type agreement and it fits
23 a going-concern value type agreement, that will benefit the
24 customers and the employees, in particular, then we will
25 certainly work off of that agreement. I have no intention to

1 recreate the wheel at all.

2 MR. SHAPIRO: Again, for the record, what we will
3 be asking IDT to do is show up with the 15 million dollars
4 plus all of the funds that are needed to operate the business
5 for the 30-day period plus the funds for the purchase price
6 of 38 million dollars. Anyone who chooses to show up
7 tomorrow with that much cash we would be happy to talk to.

8 MR. ALBALAH: Your Honor, may I very briefly.
9 (Counsel confer.)

10 MR. ALBALAH: Your Honor, this is something we
11 danced around but I want to confront now head on. I spoke
12 very briefly with a representative of Blackstone Group. You
13 saw me speak very, very briefly of debtors' counsel. You
14 heard the chairman of the board of IDT Corporation. You know
15 the financial wherewithal of my client. The debtor, its
16 advisors, have, as Your Honor painfully knows, has been
17 spending a fair amount of time keeping the telecom providers
18 of the world at bay, waiting for --

19 THE COURT: You just gave him more pain.

20 MR. ALBALAH: -- waiting for Mr. Zimmerman to come
21 up with money to close the case. Your Honor, obviously,
22 accurately portrayed why the debtor stopped that process. We
23 are here. We read the salient points of the agreement into
24 the record. We are prepared to close. We would like, as a
25 condition to that arrangement, in the event that we are

1 ready, willing, and able to close, and Mr. Zimmerman comes up
2 with the money, we view, I view, categorically, that
3 benefited the estate, I respectfully submit, there is no way,
4 to the extent that Mr. Zimmerman does come up with the money,
5 there is no way that he would have, or there is no way that
6 the estate would have been in as good of a position that it
7 will be in tomorrow but for IDT.

8 Therefore, it is customary, as Your Honor is
9 well-aware, for a reasonable breakup fee, I believe a
10 two-and-a-half-percent breakup fee, in the event that we are
11 prepared to close, is reasonable in these circumstances. And
12 I would respectfully request that Your Honor now, so that
13 when we work literally around the clock to get this deal
14 done, we know that we are working and IDT knows that IDT's
15 professionals are working around the clock so that they
16 either get the deal or they benefit the estate.

17 MR. KIRPALANI: Your Honor, briefly. In terms of
18 who has been working around the clock to get us to where we
19 were, I didn't think it was IDT. But I would not comment on
20 the breakup fee at this time.

21 MR. SHAPIRO: Your Honor, I have never come
22 before a Court for a breakup fee without a signed contract in
23 hand. We don't have a signed contract in hand. I think IDT
24 is obviously showing they are interested in this, and
25 hopefully without the breakup fee they would be willing to

1 work the night to get this done. So I would respectfully
2 disagree with counsel to IDT and say let's go forward on the
3 basis that we have previously discussed.

4 MR. ALBALAH: Your Honor, you know better than
5 anyone because the first thing I asked you was to so order
6 the record, there is no better way -- obviously, we can't
7 manufacture documents now. By requesting the Court to so
8 order the record, I respectfully suggest that it's clear that
9 we are ready to close.

10 When Mr. Shapiro suggests that normally there is
11 no breakup fee without a signed agreement, I agree with Mr.
12 Shapiro. But as Your Honor correctly said, this is not the
13 normal case. We are coming in here, we believe, I don't want
14 to be melodramatic, but we are coming in here and providing
15 excellent exit strategy for everyone, for the Court, for the
16 telecom companies, for the debtor, for the bank.

17 I submit that it is simply wrong to have IDT
18 provide that benefit without being compensated in the event
19 that the benefit that it gives the estate, the estate
20 benefits. The fact there is no signed agreement, we are
21 prepared to so order the record.

22 THE COURT: I know everybody is anxious and kind
23 of rushing over issues. But you want to put a breakup fee in
24 your deal. You have every right to negotiate that with the
25 debtor. When that document is done at 12:00, that will

1 either be in there or not. I don't get into that today in
2 any way. But there is nothing that prevents you from further
3 negotiating that with the debtor. And then your document,
4 with or without that fee, goes out for public scrutiny and
5 if -- who is the other bidder -- Mr. Zimmerman, if he decides
6 that he can qualitatively and quantitatively up your offer,
7 he will have a chance to do that and you will have your
8 breakup fee in it.

9 Again, I don't want to get into that detail,
10 because I am supposed to sit back and be objective at 3:00
11 tomorrow about whatever comes before me. So I don't want to
12 participate. But, I mean, you know how to get your breakup
13 fee, and it's by negotiation into your written document that
14 is going to be the subject of the 3:00 hearing.

15 MR. ALBALAH: Actually, I respectfully submit
16 that it can't -- I don't want to -- I don't think it will
17 work that way because of the following reason. We are here
18 tomorrow. If Mr. Zimmerman comes up with the 15 million
19 dollars and the adequate assurance of closing and the
20 carrier, there would be no incentive -- again, I am not
21 trying to talk against my interest -- but at that point in
22 time, there would be no incentive whatsoever for the debtor
23 to support a breakup fee because the debtor, if it has the
24 assurance --

25 THE COURT: If he does it before 12:00, you are

1 right.

2 MR. ALBALAH: What I am suggesting --

3 THE COURT: If Mr. Zimmerman puts more end money
4 on the table, and his -- Mr. Kenney, did you want to say
5 something?

6 MR. KENNEY: I will wait, Your Honor.

7 THE COURT: -- that will happen.

8 MR. ALBALAH: What I am asking, Your Honor, is if
9 we are here tomorrow, ready, willing, and able to close...

10 THE COURT: At 3:00.

11 MR. ALBALAH: Yes. ...and Mr. Zimmerman, or for
12 that matter anyone else, comes out of the woodwork, and the
13 debtor, which I believe is expressing a change in position --
14 it was my understanding loosely that it was the debtors'
15 opinion --

16 THE COURT: I don't think the debtor is shopping
17 your offer. It is just that everybody wanted to come into
18 Court and put it on the record. In essence, they are
19 record-shopping your offer. I guess Mr. Zimmerman knows what
20 your deal is now.

21 MR. SHAPIRO: Maybe I can suggest something he
22 would find acceptable. We are going to try to reach a
23 contract with them by noon tomorrow, maybe even tonight. If
24 we have a signed contract and as Your Honor suggested if they
25 insist as a condition that there is a breakup fee, the debtor

1 if they sign that contract will be bound by that contract.

2 THE COURT: That's right.

3 MR. SHAPIRO: Then we have a contract upon which
4 I am comfortable coming to Your Honor and saying as part of
5 this we have a breakup fee. Right now we have nothing. We
6 don't have a contract. We have an expression of intent.
7 When we get to a contract and have a breakup fee, we can come
8 before Your Honor tomorrow.

9 MR. ALBALAH: I accept that proposal in large
10 part and I appreciate the creativity and flexibility.
11 Normally, as Your Honor knows, this would be the time the
12 Court would say, if we do that, Your Honor now approves the
13 breakup fee, because otherwise, there is no order. Normally,
14 there are bidding procedures which contemplate a breakup fee.

15 THE COURT: What I can tell you is if in any case
16 that comes before me somebody proposes a deal that goes to a
17 written contract and it has a breakup fee in it, and that
18 contract ultimately motivates someone else to come in and pay
19 a lot more money, they get their breakup fee.

20 MR. ALBALAH: Thank you, Your Honor.

21 THE COURT: I don't know what is going to happen
22 in this case, because there is no written document for me to
23 consider.

24 MR. KIRPALANI: Nor do I think there is any
25 evidence that IDT's interest is what stirred Wintel's

1 interest in any sense. We have always been negotiating
2 subject to obtaining financing. IDT was at the auction just
3 like Wintel telecom was at the auction. If there was a time
4 to start up interest, it would have occurred a long time ago.

5 THE COURT: Write that down and tell me tomorrow,
6 if things don't go well.

7 MR. KENNEY: Your Honor, he backed down. I don't
8 need to say anything.

9 MR. ALBALAH: For the record, I don't know if I
10 backed down, but the record speaks for itself.

11 MR. WHITE: Your Honor, Bill White for
12 BellSouth. Did I understand Your Honor correctly that any of
13 the service providers who wish to be heard tomorrow on the
14 issue of the temporary restraining order will be able to be
15 heard?

16 THE COURT: Yes.

17 MR. WHITE: The other issue I wanted to raise
18 with Your Honor was this particular proposal that the Court
19 indicated would be available at noon with a hearing at 3:00,
20 I don't see realistically how the carriers will be able to
21 review that proposal, particularly to be able to consult with
22 their clients to determine whether they would oppose that.

23 This particular proposal, the scheduling of this,
24 alters even the bid procedures order, which itself was fairly
25 truncated. I am concerned about, particularly in light of

1 the supplemental motion that was filed by the debtor over the
2 weekend, that the carriers that I have discussed it with have
3 a number of problems because of the potential for the
4 assumption and assignment of contracts under the guise of the
5 sale of assets.

6 So I can only say that I think that three hours
7 notice for a deal to the service providers who are the
8 biggest constituency that are going to be affected by this is
9 too short.

10 THE COURT: All right. Thank you.

11 MR. SHAPIRO: Just in response to that, Your
12 Honor. I think the salient points of the deal were put on
13 the table tonight. He obviously can get in touch with his
14 client and has the better part of tomorrow. Obviously, it is
15 very short. On the other hand, I think that this is a deal
16 that if we can make it happen, it is in everyone's interest,
17 and therefore he ought to take the name of counsel to IDT and
18 have his client speaking to them between now and 3:00
19 tomorrow.

20 MR. PALACIO: Your Honor, I apologize. On behalf
21 of Williams. Your Honor, I just want to touch on that last
22 point briefly. What they are doing when they say the salient
23 terms have been discussed, what their salient terms are, at
24 least one of them is a de facto assumption and assignment.
25 There is a big issue there.

1 A lot of the telecoms, a lot of the other
2 creditors in this case, for lack of a better word, have an
3 issue there. So by saying there is salient terms, get in
4 contact with somebody, we are talking about 18 hours really
5 to hammer out their differences. And you are not talking
6 about a couple thousand dollars. You are talking millions
7 and millions of dollars here.

8 When they sent out their cure objection notices,
9 if you will, with respect to Williams, they said, certain
10 contracts, we had no idea what contracts they are talking
11 about. It is something that is not that easy. That is the
12 one issue I wanted to highlight for Your Honor before we go
13 on this course, if you will, of contacting them and see if
14 you can work something out by tomorrow.

15 The second is merely a request for Your Honor,
16 that is with respect to my co-counsel, who flew from
17 Oklahoma, has since left, has asked to the extent Your Honor
18 is inclined to grant a hearing on the TRO, which Your Honor
19 has, that he be able to participate telephonically.

20 THE COURT: Well, I have to be careful about
21 that, because the numbers of people that are involved, I
22 don't know if we can do that. But to the extent we can,
23 mechanically, I will allow it.

24 MR. PALACIO: Thank you, Your Honor.

25 MR. SHAPIRO: Your Honor, to address the point.

1 I don't think there is any intention of assuming or assigning
2 any contracts whatsoever tomorrow. That is not the game
3 plan. The game plan is to close a contract with the buyer.
4 The buyer would then have the right for a period of time to
5 determine which contracts it wants to assume and have assumed
6 and assigned to it or not have assumed and assigned to it.

7 In the meantime, as I think you heard, the buyer
8 understands that they are picking up all accruals that would
9 occur from the time they take over the business, the closing
10 date, forward, they are not picking up any arrearages. We
11 are talking about nobody having to deal with the notice
12 period for a cure amount tomorrow or anything like that. We
13 are talking about that being done in the future if and to the
14 extent the buyer determines that any of the contracts should
15 be assumed and assigned.

16 MR. PALACIO: Your Honor, with all due respect to
17 Mr. Shapiro, my point is to the extent this sale goes
18 through, one of the terms there requires that the service
19 providers continue and are obligated to provide service. If
20 that is the case, they are basically taking that obligation
21 that is already there and transferring that pursuant to a
22 sale. You can't have a sale without an assumption and
23 assignment. That is my point. Then there is a cure issue
24 there.

25 MS. SAWCZUK: Your Honor, Maria Sawczuk on behalf

1 of Eastwire (phonetic) Communications. I will be very
2 brief.

3 I wanted to bring it to Your Honor's attention
4 that I believe Eastwire is the only service provider at this
5 point that is also in bankruptcy. So to the extent any of
6 these negotiations affect or change or modify the claims that
7 Eastwire has in this bankruptcy, it may be necessary -- I am
8 not going to opine on this at this point because I am not
9 entirely sure how it is going to be affected -- it may be
10 necessary to bring those changes to our Bankruptcy Court for
11 approval. We do have a fiduciary duty to our creditors in
12 our case.

13 THE COURT: Where are they in bankruptcy?

14 MS. SAWCZUK: Here, Your Honor, in front of Judge
15 Katz.

16 THE COURT: All right.

17 MR. LADDIN: Good evening, Your Honor. Daryl
18 Laddin on behalf of Verizon.

19 Your Honor, I am here before the Court because
20 Verizon is owed over five million dollars in postpetition
21 administrative expenses that remain unpaid, despite an order
22 that this Court previously entered in the case. At the
23 outset of the case, Verizon entered into a stipulation under
24 Section 366 with the debtors that required semi-monthly
25 prepayments, and also gave Verizon the right to terminate

1 service on two business days notice in the event that
2 payments were not made. The debtor failed to make those
3 payments on several occasions. Verizon worked with the
4 debtors, continued to try to work with the debtors, the
5 debtors continued to fail to pay. As a result of that, we
6 are now here being owed over five million dollars.

7 Your Honor, I am very concerned with the
8 procedural posture that we are in here. In particular,
9 without reiterating what Mr. Gwynne had to say, I would like
10 to state that Verizon does join in the comments and objection
11 of MCI Worldcom.

12 In addition to that, Your Honor, we have
13 significant concerns about the due process with respect to
14 this particular sale. As I understood Your Honor's comments
15 during the meeting with the debtors earlier, Your Honor had
16 denied the sale motion because there was no bidder. The sale
17 that has just been discussed with the Court here is not the
18 subject of a motion. It has never been noticed. There is no
19 opportunity for any of the carriers, including Verizon, to
20 review the terms of the sale. And it is not reasonable to
21 require any party in interest to review the terms of a
22 contract on what will amount to less than three hours notice
23 and be able to address all of the issues.

24 Substantively, I would expect quite a few
25 objections, including, in particular, the injunction that

1 apparently the purchaser is asking the Court to issue. I
2 will acknowledge for the Court that there is a difference
3 between issuing an injunction against service providers based
4 upon the request of the FCC for the concerns of the FCC -- as
5 I understand, that was a significant reason why the Court
6 entered the initial injunction -- there is a significant
7 difference between that and issuing an injunction that
8 benefits the purchaser in this case as well as the banks,
9 particularly if they are going to request that that
10 injunction be issued if there are any unpaid administrative
11 expenses. I would expect that issue to be raised tomorrow,
12 and we would expect that to the extent that they are seeking
13 to be paid -- excuse me, to receive service during any period
14 subsequent to tomorrow, that they pay all of the past due
15 administrative expenses that are owed.

16 THE COURT: Just so the record is clear, we came
17 here for a sale hearing today. I was informed by the debtor
18 there was no sale. So I said procedurally what I was
19 prepared to do is deny their motion as moot but I would
20 reconsider if the debtor got to me any information that there
21 was somebody around the courtroom that wanted to make a
22 proposal. And that's what happened. So the procedural
23 status of the sale motion is that it's not denied, because
24 the offer of Mr. Jonas' company is still pending, and the
25 hearing is continued till tomorrow.

1 MR. LADDIN: For the record, I would go ahead and
2 state my objection for the record on due process grounds
3 going forward with the hearing tomorrow.

4 THE COURT: Okay.

5 MS. SILVERSTEIN: Laurie Silverstein on behalf of
6 certain affiliates of SBC.

7 I would join in Mr. Gwynne's comments with
8 respect to the issuance of the TRO. And I would also add
9 that I was in the courtroom at the last hearing, and it was
10 my understanding that the sale hearing and the TRO were being
11 put over until today, and I believed the hearing to be
12 adjourned and left with my client, only to find out
13 subsequently that a TRO was entered. So we were here at the
14 time, but since the TRO was put over until today we left. I
15 don't know what comments were made by the FCC. I did not
16 receive any notice of the TRO hearing prior to being in
17 court. And I also believe there are significant procedural
18 issues with respect to the entry of the TRO.

19 I also agree that there are procedural issues
20 with respect to going forward with the sale hearing on a
21 completely different as yet undocumented sale motion.

22 One salient point that I would like clarified,
23 because it has now come up twice during the discussions that
24 have happened, is that the buyer will be taking on the
25 going-forward obligations from the closing date. That's what

1 I keep hearing. I don't know when the closing date is going
2 to be.

3 THE COURT: You will hear about that tomorrow.

4 MS. SILVERSTEIN: That is a salient term. If
5 they know, we would like to hear today, if it is different
6 than tomorrow.

7 THE COURT: The hearing that was scheduled for
8 today is adjourned until 3:00 tomorrow, which includes the
9 sale and the temporary restraining order. When I was told
10 there wasn't a sale, there was a discussion of how we would
11 have a hearing that would consider all the interests that
12 would be affected by a conversion to Chapter 7. So I
13 adjourned the hearing on the basis of that information to
14 3:00 tomorrow by teleconference.

15 Then I was advised that there was the possibility
16 of a sale. So all I have done is adjourned it to an open
17 hearing in the courtroom at 3:00 tomorrow, because it appears
18 we are not in a conversion mode, unless I am misunderstanding
19 something. To get to that, in either instance, we had to
20 extend the TRO another 24 hours, until tomorrow. But all
21 those issues about what is in the deal, I assume, will be in
22 the document and you can get it at 12:00 tomorrow.

23 MR. SHAPIRO: The debtor agrees with Your Honor's
24 position. It's clear that we came to Court hoping to come to
25 Court at some point today with a sale. We didn't think we

1 had one this morning. Now we may have one. We are
2 continuing and adjourning the hearing until tomorrow and we
3 will find out tomorrow whether in fact we do. And we will
4 address all the issues that people will be raising tomorrow
5 once they have an opportunity to see the contract.

6 THE COURT: If there is no transaction to be
7 considered at 3:00 tomorrow, then we will go forward with the
8 premise that the teleconference was going to be, and that
9 would be to consider with the United States Trustee the
10 conversion.

11 MR. SHAPIRO: I agree, Your Honor.

12 THE COURT: Rather than be on a teleconference,
13 we will come here at 3:00 and consider that.

14 MR. SHAPIRO: Hopefully Pauline Morgan has a lot
15 of space in her house tonight.

16 THE COURT: We are going to -- unless somebody
17 has something that is different from what we have been
18 talking about...

19 MS. MELNIK: Selinda Melnik for Lexend
20 (phonetic).

21 We had put on a motion for today on shortened
22 notice because of this hearing, and I was wondering whether
23 that would be put over not until tomorrow but to the omnibus
24 hearing on Thursday. I wanted to clarify that.

25 THE COURT: The only thing that was to be heard

1 today was the sale motion and a reconsideration of any
2 comments that folks wanted to make with regard to a TRO.
3 There was nothing else really on the agenda. We are going to
4 move to tomorrow. But anything else will be heard at a
5 to-be-scheduled omnibus hearing, because I am not sure what's
6 going to happen tomorrow that it would make any sense to have
7 an omnibus hearing on the 20th. It's still possible this
8 case could go to Chapter 7 tomorrow.

9 MS. MELNIK: I don't think that would moot our
10 motion, no.

11 THE COURT: No. But it would put it in a
12 different context. And the Trustee, the reason why we
13 couldn't consider that information today is because the
14 United States Trustee has to find somebody to come in.

15 MS. MELNIK: There may or may not be an omnibus
16 hearing on the 20th.

17 THE COURT: There won't be for sure, because I
18 don't think -- Mr. Kenney, you can help us -- are you able --
19 I thought that was part of the stress of doing anything
20 today, because we have to get somebody to come in.

21 MR. KENNEY: Your Honor, we do. We might be able
22 to do it in a couple days. But I know, if I get a trustee in
23 even this week, the trustee is not going to be able to
24 respond to Ms. Melnik's motion.

25 THE COURT: So I don't think the 20th is going to

1 be a day that anything can be done. So we are going to focus
2 on tomorrow and see what happens. If it is a sale -- it
3 would be different than if it is converted. And then if it
4 is converted, he will have to get somebody that can be --

5 MS. MELNIK: So we will take one day at a time.

6 MR. JESSUP: Douglas Jessup on behalf of Univance
7 (phonetic), Your Honor. I flew out from Denver last Monday
8 coming for a sale. I flew out again for a sale. I will
9 probably stay overnight and wait for another sale. I did
10 have last week set a motion for adequate assurance, Your
11 Honor. Obviously, this is all moving very quickly, and we
12 did also have it set today. I was one of the other motions
13 that was set today at 2:30. I think we ought to roll that
14 over to tomorrow, if that is possible, Your Honor.

15 What I am faced with and what I have learned in
16 this whole process is the FCC came in and said we are going
17 to need 31 days to shut things down, and therefore, carriers,
18 you are going to have to go along with that, and we are all
19 scrambling to figure out who is going to pay for that and
20 things like that. Now we have a new party who says they will
21 pay for things going forward, although I have not
22 heard -- they have left open when they get to terminate.
23 What I don't want to see is, they dance together for 45 days,
24 60 days, they say they are out of here and by the way send
25 their termination notice. Now we are right back to where we

1 started again, 30 days, with nobody paying for it again. It
2 has all kind of come to a head on this. I bring that to your
3 attention, Your Honor, and also ask for my motion to be
4 continued.

5 THE COURT: The motion was put on, again, the
6 agenda, without my agreement to hear those kind of matters
7 today. You can present any kind of a position that you want
8 in response to whatever sale is proposed to be heard
9 tomorrow. But again, if there is no sale tomorrow, then the
10 context is much different. So I don't want to hear anything
11 in the nature of adequate assurance if there is going to be a
12 trustee appointed by the United States Trustee.

13 MR. JESSUP: Agreed, Your Honor.

14 THE COURT: Everybody here is sophisticated
15 enough to understand that there would have been a great
16 difference today if we continued with no buyer in a whole lot
17 of ways. And we are still not sure that there is a buyer.

18 MR. JESSUP: Your Honor, I feel the same way.
19 That is why we are trying to protect ourselves, trying to
20 understand what is going on. I would also join in the other
21 comments of the carriers' counsel. Thank you, Your Honor.

22 MR. SHERMAN: Andrew Sherman, Seals Cummis, on
23 behalf of Qwest Corporation and Qwest Corporation
24 Communications.

25 We join in the comments by the other telecoms.

1 Your Honor, one point we would like some
2 clarification on is what contracts will the debtor be
3 assuming or will the purchaser be utilizing from the closing
4 date forward. We still have yet to be supplied with a list
5 of contracts. And if there is going to be this, quote,
6 management agreement, we need to know what business the
7 purchaser is going to manage, meaning what are the
8 contracts. And if that list can be provided by tomorrow at
9 12:00, at least that might get some type of notice out to the
10 counter-parties to the contract of what --

11 THE COURT: I don't think they are going to have
12 that tomorrow. I think they contemplated, I will let Mr.
13 Shapiro a little bit -- when the presentation was made, my
14 understanding is that that was what they were going to do
15 between tomorrow and the presentation to the state and
16 federal regulatory authority.

17 MR. SHAPIRO: Let me try to explain how I think
18 it would work. This is again really the buyer's
19 transaction. As I understand it, the buyer will not be
20 seeking to assume and assign any contracts tomorrow. So the
21 debtor will continue to utilize let's say the transaction
22 actually closed after Your Honor entered an order tomorrow
23 immediately, so on Thursday, or Wednesday or Thursday, the
24 buyer will have bought the equipment. Obviously, the
25 licenses won't be transferred, the customers won't be

1 transferred until subsequent regulatory approval by the FCC
2 and the appropriate states.

3 However, in the interim, as we have heard, the
4 buyer intends to operate the business and has said they will
5 continue to pay all the ongoing costs of operating the
6 business. To the extent that the buyer continues to use the
7 services of Mr. Sherman's client, Qwest, then they would have
8 to pay on a current basis, on a go-forward basis from the
9 closing forward for those services.

10 THE COURT: As I understood it, they were going
11 to escrow some funds.

12 MR. SHAPIRO: They agreed to put 30 million
13 dollars in escrow to support their obligation to do so. If,
14 however, three days into their ownership they decide to
15 terminate the Qwest relationship, then they would obviously
16 have to give Qwest notice and have to terminate and stop
17 paying --

18 THE COURT: While that process was occurring,
19 they would be getting paid from the escrow funds.

20 MR. SHAPIRO: Correct.

21 MR. SHERMAN: We can address it tomorrow. Who is
22 going to be the party to our contract subsequent to this? Is
23 the debtor going to remain on the hook or is it going to be
24 the purchaser? As the purchaser, there has to be a formal
25 assumption and assignment. There has to be a cure.

1 THE COURT: It sounds to me like they are both on
2 the hook, but the debtor has no money. It's the purchaser,
3 and once they notice you, either for, it would be an
4 assignment, you will have an opportunity to come in and
5 object to that assignment. And if they reject you, you have
6 an opportunity to come in, being paid till that point, and to
7 present your cure.

8 MR. SHERMAN: I guess everybody can imagine what
9 will happen is they will not give that notice of assignment
10 for 60 days, allow the carriers to continue to provide
11 service, then on the 60th day or whatever they decide to
12 reject, again, you have sort of abdicated or pushed off the
13 rights the telecoms, including Qwest, has under 365. We can
14 get into that tomorrow.

15 THE COURT: Well, again, it would depend on the
16 agreement and what the time frames of the agreement are and
17 the amount of money and what determination I will make that
18 they have protected companies like your client.

19 MR. SHERMAN: The last point, Your Honor, I guess
20 we will get into it tomorrow, it appears the debtors seem to
21 be transferring their rights under 366 to the purchaser. In
22 essence, the carriers will be forced to begin anew under this
23 management arrangement, with no deposit or otherwise, and
24 again, we are going to be providing full services, I think
25 the management agreement had a five-day cure. And again, we

1 will reserve those rights and more likely than not object to
2 that tomorrow.

3 THE COURT: Well, what would happen to your
4 client if tomorrow I signed a conversion order and I continue
5 the injunction till I feel comfortable with the evidence that
6 I have relied on from the FCC that you not terminate? How
7 long could you be pushed out then, with no money?

8 MR. SHERMAN: As long as Your Honor continues the
9 injunction. That is up to Your Honor's discretion, I
10 imagine.

11 THE COURT: But assuming it's the 31 days, I am
12 not so sure you are in a better situation there. That is
13 your best situation without a purchaser.

14 MR. SHERMAN: That could be.

15 THE COURT: How much would your client lose in 35
16 days?

17 MR. SHERMAN: Over a million dollars. A
18 million-five. But at that point, we would know there would
19 be a finite date and that services would terminate if the
20 arrangement -- we can deal with it if in the sale continues.

21 THE COURT: I guess my point is, I don't think
22 that that finite amount of money changes whether you get 60
23 days and get paid or whether you get it tomorrow. That is
24 why I am having a hard time understanding the position.

25 MR. SHERMAN: Well, first, we are not assured,

1 and I understand --

2 THE COURT: You would like to get out of this
3 Winstar situation as quickly as possible, I understand that.
4 But absent that, I don't see your exposure shifting in any
5 way from that outside amount of money, based on what I know
6 from what I have heard from the FCC to date.

7 MR. SHERMAN: We are continuing to provide
8 services, yes, you will have a guarantee of IDT, I guess
9 however they are going to phrase it, in the document. But --

10 THE COURT: I think it is more than a written
11 guarantee. I think it is a cash guarantee. They are going
12 to put money in the bank. If that starts to run short, I
13 assume you can run back in here and tell me, Judge, there is
14 not enough money in there, we need more. And I would tell
15 Mr. Jonas to ante up because things are taking longer, if you
16 want to stay in that game or your 31 days or 35 days would
17 kick in because I wouldn't enjoin you any longer.

18 But again, I don't see how the outside gets any
19 worse than five or six days for you.

20 MR. SHERMAN: Maybe it's semantics or if it was
21 structured as a prepay, this 30 million dollars, you started
22 a prepay arrangement with the various carriers, that might
23 gives the carriers a little more comfort on a go-forward
24 basis. Just to have the 30 million sit there in escrow and
25 you have to apply for it and be paid in arrears is different

1 than the arrangement we negotiated with the debtor --

2 THE COURT: I understood it to be an ongoing
3 thing. We will see tomorrow when they present the document.
4 But I think you got to focus on that potential of a 30- to
5 40-day loss is out there no matter, and what saves you from
6 that is a deal.

7 MR. SHERMAN: That is one perspective and maybe
8 my client will disagree with that. Maybe, as Your Honor
9 said, they want to get out of this situation.

10 THE COURT: Because it is unsettled and I can
11 understand that.

12 MR. SHAPIRO: Your Honor, I suggest we need to
13 resolve all these things in the contract. We haven't reached
14 agreement on all these points. We will reach agreement,
15 hopefully get a document.

16 THE COURT: You are getting some information of
17 what could help you work through.

18 MR. SHAPIRO: It is helpful to know people's
19 concerns. We anticipated these concerns, and we will be
20 address them tomorrow.

21 THE COURT: Anyone else want to be heard?

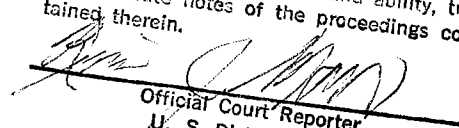
22 We will be in recess until 3:00 tomorrow.

23 (Hearing concluded at 7:05 p.m)

24 - - -

25 Reporter: Kevin Maurer

I hereby certify that these shorthand notes
are, to the best of my skill and ability, true
and accurate notes of the proceedings con-
tained therein.


Official Court Reporter
U. S. District Court